

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ANDREW ANDRED WOOLCOCK,

Defendant.

ORDER
12-CR-81S

Presently before this Court is the Government's Motion to Compel a DNA sample from Defendant. (Docket No. 48.) According to the government, a forensic biologist has identified a partial profile of human DNA on one of the plastic bags that contained contraband pills seized from Defendant's truck. No laboratory report has thus far been produced.

Defendant opposes the government's motion on the basis that, without a laboratory report, there is insufficient cause to compel a DNA sample. He also objects to the timing of the government's motion, which is made just two weeks before trial.

Having considered the government's motion and Defendant's response thereto, this Court finds that the motion must be denied. The government seized the plastic bags at issue on or about February 21, 2012, almost 11 months ago. The trial date was set on November 26, 2012, almost two months ago. Yet the government did not complete DNA testing until two weeks before trial, and even now, does not have a written laboratory report discussing the DNA findings.

Whatever the reason for the delay, the Defendant is unfairly prejudiced by the government's eleventh-hour request and the possible entry of this DNA evidence into the trial at this late stage. Defendant does not have a laboratory report, does not know the full

basis for the forensic biologist's findings, and does not have his own DNA expert. With no compelling reason for the lateness of the government's motion offered, this Court finds that Defendant is unduly and unfairly prejudiced. The government's motion is therefore denied.

IT HEREBY IS ORDERED, that the Government's Motion to Compel a DNA Sample (Docket No. 48) is DENIED.

SO ORDERED.

Date: January 15, 2013
Buffalo, New York

/s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court